

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE SERVICES
FOR THE STATE OF MICHIGAN,

Petitioner,

v

File No. 03- 1127 -CR

THE WELLNESS PLAN,
a Michigan health maintenance organization

Hon. William E. Collette

Respondent.

ORDER
PLACING THE WELLNESS PLAN INTO REHABILITATION,
APPROVING THE APPOINTMENT OF A SPECIAL DEPUTY REHABILITATOR,
AND
PROVIDING INJUNCTIVE RELIEF

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham
State of Michigan, on the
1st day of July, 2003

PRESENT: HONORABLE William E. Collette
Circuit Judge

Petitioner, Linda A. Watters, Commissioner of the Office of Financial & Insurance Services of the State of Michigan (Commissioner), has filed a Verified Petition seeking an Order of Rehabilitation, Appointment of a Special Deputy Rehabilitator, and Injunctive Relief. The Wellness Plan has consented to being placed into Rehabilitation under MCL 500.8101 *et seq.* under the terms and conditions determined by the Commissioner to be appropriate. The Court is fully advised in the premises and finds:

1. Based on MCL 500.8103(b), a creditor is a person having a claim against The Wellness Plan (Wellness), whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

2. Based on MCL 500.8105(1), the Court is authorized to enter an Order it considers to be necessary and proper to prevent:

- a. Interference with the Rehabilitator or with the Rehabilitation proceedings;
- b. The institution or further prosecution of any actions or proceedings against Wellness, its assets, or its members;
- c. The obtaining of preferences, judgments, attachments, garnishments, or liens against Wellness, its assets, or its members;
- d. The levying of execution against Wellness, its assets, or its members;
- e. Any other threatened or contemplated action that might lessen the value of Wellness' assets or prejudice the rights of its members, creditors, or the administration of this rehabilitation proceeding.

3. All creditor claims against Wellness are within the jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

4. MCL 500.8114(2) in conjunction with MCL 500.8121(1)(m) authorizes the Rehabilitator to: "[P]rosecute any action that may exist on behalf of creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

5. Wellness has stipulated to the existence of the legal and factual basis for the entry of an Order placing Wellness into rehabilitation.

6. Wellness has stipulated to the entry of an Order placing Wellness into rehabilitation on terms and conditions the Commissioner deems appropriate.

7. Immediate action placing Wellness into rehabilitation is necessary to protect the interest of Wellness' members, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Commissioner's Petition for Order of Rehabilitation is GRANTED, and The Wellness Plan ("Wellness") is placed into Rehabilitation pursuant to MCL 500.8101 *et seq.*

2. The Commissioner is appointed Rehabilitator of Wellness, and is further authorized to appoint one or more Special Deputy Rehabilitator pursuant to MCL 500.8114(1). Hereafter the Commissioner shall be referred to as the Rehabilitator.

3. The Rehabilitator shall take immediate possession of all the assets of Wellness and administer those assets under the Court's general supervision.

4. By operation of law, legal title to all assets, accounts and moneys of Wellness is hereby vested in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the principal office or place of business of the Respondent is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

5. The Rehabilitator, shall have all the powers set forth in MCL 500.8114 and 500.8115 without being specifically set forth in this Order, all applicable powers set forth in Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 *et seq.*, and such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

6. All powers of the current directors, officers, and managers of Wellness, are hereby suspended in their entirety upon issuance of this Order. The Rehabilitator shall have and exercise the full and complete power of directors, officers, and managers. The Rehabilitator may

redelegate, in writing, some or all of her authority to a director, officer(s) or manager of Wellness.

7. The Rehabilitator shall have full power and authority to direct, manage, hire, and discharge employees subject to any contract rights they have, and to deal in totality with the property and business of Wellness as provided by law.

8. A director, manager, officer, employee or agent of Wellness and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of Wellness.

9. The Rehabilitator may take such action as she considers necessary or appropriate to reform or revitalize the Wellness, and is empowered to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformation of Wellness to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

10. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Wellness is appropriate, she shall prepare a plan to effect those changes. The plan shall be submitted to the Court for approval.

11. The Rehabilitator shall take all steps necessary to preserve the existing provider network and to maintain uninterrupted health care services. The Rehabilitator shall take all necessary steps to provide payment on a going forward basis to all health care providers for goods or services rendered subsequent to the date of this Order pursuant to all existing provider relationships and agreements, WHICH RELATIONSHIPS AND AGREEMENTS, OR AMENDED AGREEMENTS, REMAIN IN FULL FORCE AND EFFECT pursuant to MCL 500.8105(1)(k), until further order of this Court.

The Rehabilitator shall, by December 31, 2003, and every six (6) months thereafter, review the necessity for the continuation of the provisions of this paragraph of the Order and

make a recommendation to the Court regarding the continued need for the injunctive relief it provides.

12. The Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order, until further order of this Court.

13. The Rehabilitator shall pay Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

14. Entry of this Order shall not constitute an anticipatory breach of any contracts or relationship between Wellness and other persons. MCL 500.8113(3). All persons, including medical service providers, doing business with Wellness on the date of this Order are hereby enjoined and restrained from terminating or attempting to terminate such relationship or contract on the basis of the entry of this Order or Wellness' financial condition during the pendency of the rehabilitation. MCL 500.8105(1)(k).

15. All employees, officers, directors or agents of Wellness, or any other persons with authority over or in charge of any segment of the affairs of Wellness, shall cooperate fully with the Rehabilitator and the Deputy Rehabilitator. MCL 500.8106. Among other things, full cooperation requires:

(a) Prompt replies to any inquiry by the Rehabilitator including a written reply when requested.

(b) Providing the Rehabilitator with immediate, full and complete possession, control, access to and use of all books, accounts, documents, and other records, information or property of or pertaining to Wellness in the possession, custody, or control of any person or entity as may be necessary so as to enable the Rehabilitator and Deputy Rehabilitator to operate the business and to maintain the continuity of health care services being provided to all subscribers.

(c) Providing the Rehabilitator with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Wellness.

(d) Providing the Rehabilitator with full and complete access to all legal opinions, memorandum, letters, documents, information, correspondences, or legal advice, attorney/client provided materials and attorney work product materials to or from Wellness' in-house or outside counsel to Wellness or any of its officers, directors, employers or agents related to Wellness or in connection to the operation of Wellness or its business.

(e) No obstruction or interference with the Rehabilitator or Deputy Rehabilitator in the conduct of a receivership proceeding pursuant to MCL 500.8101 *et seq.*

16. As provided by law, failure to cooperate may result in any sentence requiring the payment of a fine not exceeding \$10,000.00, imprisonment for a term of not more than one year, or both, as provided by MCL 500.8106(4).

17. Any person with possession, custody or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Wellness shall immediately:

- a. Provide the Rehabilitator with notice of the persons possession, custody or control and a description of the assets, documents, data, accounts, books, records, information, or property in the person's possession, custody or control.
- b. Tender possession, custody, and control to the Rehabilitator.
- c. Take all necessary steps to safeguard, preserve and retain the assets, documents, data, books, records, accounts, moneys, information or records.

18. Pursuant to MCL 500 8105(1)(g)(k) and MCL 500.3529(3), all non-contracted and contracted medical care providers are hereby enjoined and restrained from obtaining any

judgments and/or balance billing of Wellness' subscribers, enrollees or members for medical goods provided or services rendered prior to the date of this Order. This prohibition does not apply to any applicable co-payments, deductibles or fees for medical goods or services that are not covered by Wellness.

19. Pursuant to MCL 500.8105(1) and MCL 500.8114(2) and except as provided in ¶¶ 18, 21, 22, and 23 all Creditors of Wellness are enjoined from:

- a. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Wellness, its assets, its members, its enrollees, its subscriber, its officers, its directors, or its employees;
- b. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator, his agents, or the State of Michigan and its officers, agencies or departments for claims or actions arising out of or related to claims against Wellness or proceedings under MCL 500.8101 *et seq*;
- c. Obtaining preferences, judgments, attachments, garnishments, or liens against Wellness, its assets, its subscribers or members, its officers, its directors, or its employees;
- d. Levying of execution against Wellness, its assets, its subscribers, enrollees or members, its officers, its directors, or its employees;
- e. Taking any other action that may lessen the value of Wellness' assets or prejudice the rights of Wellness' creditors as a whole, its subscribers, enrollees or members or the administration of this rehabilitation proceeding.

20. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator or member or subscriber for the reasonable costs and attorney fees incurred in

enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

21. All creditor claims against Wellness are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

22. Any and all claims by Creditors against Wellness must be raised or asserted within the rehabilitation proceedings before this Court and are subject to this Court's orders regarding the submission and determination of claims.

23. The Rehabilitator shall develop a method for the submission, evaluation and resolution of all claims for goods and services provided to Wellness and its subscribers or members prior to the date of this Order.

24. All employer groups and other entities currently contracted with Wellness for health care services for its employees, members, enrollees or recipients, are hereby enjoined and restrained from terminating or attempting to terminate such relationship prior to the contract's expiration date or any automatic renewal or extension of the contract. MCL 500.8105(1)(k) and MCL 500.8113(3)..

25. The Rehabilitator's appointment of Eoshealth Regulatory Services, LLC as Deputy Rehabilitator is approved. Eoshealth shall have such authority and responsibilities as may be delegated to it by the Rehabilitator. The proposed fees for Eoshealth's services are approved. Eoshealth's fees and expenses shall be paid pursuant to its contract with the Rehabilitator and MCL 500.8114(1).

26. The Rehabilitator shall make an accounting to the Court of Wellness' financial condition and progress to towards rehabilitation on or before December 31, 2003, and each succeeding six-month period thereafter.

27. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary and appropriate.

WILLIAM E. COLLETTE

Circuit Judge